

1 JUDGE FRYSIK: The witness is making -- the -- his  
2 remark was as to the difference of the terms. This is an  
3 overlap study reference in Exhibit 8. It's not a map. So I  
4 agree.

5 BY MR. WARD:

6 Q Did you ever, did you ever receive anything from Mr.  
7 Lysiak dated September 13, '91, advising you that, that based  
8 on the site that you had selected and the engineering that had  
9 been prepared for it, that there would not be overlap between  
10 your proposal and KCSI?

11 A I don't recall anything like that.

12 Q You don't recall?

13 A No.

14 Q You never asked for anything like that?

15 A No. I did not.

16 Q But they charged you \$200 for that and after -- tell  
17 me, they've given you -- they've since refunded that. Right?

18 A That is correct.

19 Q They did that just last month, didn't they?

20 A Yes, that's correct.

21 Q What were the circumstances of that? What led to  
22 their refunding that to you?

23 A In getting ready for today, I, I had been reviewing  
24 every single document and so have my counsels and I believe it  
25 was Mr. Neely who saw that and he asked me what that was about

1 and I didn't really know so I, I was very --

2 JUDGE FRYSIAK: Saw what?

3 WITNESS: The 70 dBu overlap study, which I had not  
4 requested. I'm not an engineer, but he was curious about it  
5 so I -- after I understood exactly what that meant, I called  
6 Owl Engineering and we found out that in effect no, I had not  
7 ordered that study. Whatever they had overcharged me for.

8 BY MR. WARD:

9 Q Did they tell you who had ordered the study?

10 A They said it could have been -- probably a mixup  
11 with Mark McVey.

12 Q Did you -- that, that occurred as I recall based on  
13 the documents that Mr. Neely kindly supplied to me last month,  
14 that, that clarification occurred about May 13, did it not?

15 A I'd have to see some --

16 Q Or May 14.

17 A It was more or less recent.

18 Q Yeah. Did, did you talk to -- you're aware that,  
19 that I took Mr. McVey's deposition on May 10 here in  
20 Washington?

21 A Yes, I am aware of that.

22 Q Did he speak to you when he returned about that  
23 deposition?

24 A The only thing that I can remember is that he made  
25 some people laugh twice. That's kind of what stuck in my

1 head.

2 Q What's that?

3 A That he made a couple of people laugh twice.

4 Q He did indeed. You'll have to just stay in  
5 suspense, Judge. We won't get that laugh until tomorrow.

6 Here's a check -- a copy of a check dated May 14 from Owl  
7 Engineering to yourself. Does that refresh your recollection  
8 of the --

9 A Yes, it does.

10 Q Does that refresh your recollection on when this was  
11 straightened out?

12 A Yes, it does.

13 Q Are you aware that question -- that I asked Mr.

14 McVev questions during the deposition about that, about that

1 Q Any reason this check was payable to you personally  
2 instead of to Sample Broadcasting?

3 A They goofed up.

4 Q I assume you didn't put the money in your pocket?

5 A No, I did not.

6 MR. WARD: Your Honor, could you ask Mr. Neely when  
7 he's also -- when he's checking with Owl Engineering for that,  
8 for that map that they supplied to her after her request that  
9 she discusses at page 4 of her exhibit. Ask him to supply us  
10 with any 70 dBu overlap studies that were referred to in this  
11 bill, because I've never seen any of those either.

12 JUDGE FRYSIK: Why wasn't it supplied before?

13 MR. NEELY: Pardon me?

14 JUDGE FRYSIK: Why hasn't it been supplied pursuant  
15 to document request?

16 MR. NEELY: I'm not certain that the document

1           MR. WARD: Well, see, as I read, as I read Exhibit  
2 7, which was Lysiak's letter to Mr. McVey sending him the 70  
3 dBu limitation -- limited area overlap -- he said, "Before I  
4 can guarantee that there will not be overlap of the 70 dBu  
5 contours, I will need to run the actual -- actually contours  
6 for the new station to make sure there's no overlap. I  
7 suggest this be completed before any, any line is secured."  
8 That implies, to me at least, that, that a further study would  
9 be made by him or he was recommending that a further study be  
10 made by him after the site was actually selected. And I, I  
11 suspect that's really what, what he did.

12           MR. NEELY: Mr. McVey will be here. He can answer  
13 what he understood to be his arrangement.

14           MR. WARD: I'll repeat my request tomorrow then.

15           MR. MILLER: Also, Your Honor, Mr. Ward had the  
16 opportunity if he had desired to take Mr. Lysiak's deposition  
17 and find out exactly what Mr. Lysiak meant by these various  
18 terms and terminologies and studies and he did not do so.

19           MR. WARD: Well, let me say, I -- that's correct. I  
20 suppose I could have deposed a lot of people. I -- with  
21 respect to the document request, I believe that it led not  
22 only on Sample and its principles, but also on its agents.  
23 And I think it's customary that, that you probe your engineers  
24 for documents as well as your -- and maybe they did, maybe  
25 they didn't. I don't know.

1 JUDGE FRYSIK: Yeah. I think if you're going to  
2 call Owl today, you might cover that -- it'll be requested  
3 tomorrow.

4 MR. WARD: Moving right along, Rivertown Exhibit --  
5 I'd like to have marked for identification, Rivertown Exhibit  
6 9 --

7 JUDGE FRYSIK: Okay.

8 (Whereupon, the document referred to  
9 as Rivertown Exhibit No. 9 was marked  
10 for identification.)

11 BY MR. WARD:

12 Q -- which is a one-page invoice dated May 14, '93,  
13 from Owl Engineering and I think that the witness has already  
14 pretty well discussed this. This is the, the revised --  
15 revision of the September 23, 1991, invoice which gives you  
16 the \$200 credit. Right?

17 A That is correct.

18 Q Okay.

19 MR. WARD: Next we come to Rivertown Exhibit 10, a  
20 handwritten six page document which was supplied to me by Mr.

1 BY MR. WARD:

2 Q Do you recognize this, Mrs. Sample-Day?

3 A Yes, I do.

4 Q Did you prepare that in your own handwriting?

5 A Yes, I did.

6 Q Is all of it in your handwriting?

7 A I'm going to look at it. Yes, it is.

8 Q Okay. And can you tell me when, when you prepared

9 it?

10 A It must have been September -- August or September

11 of '91. Or the first week -- either September or early

12 October of '91.

13 Q Why, why did you prepare it?

14 A Why did I prepare it?

15 Q Um-hum.

16 A Because I needed to know how much money was going to

17 be needed so I had to break down all of the, all of the

18 expenses for three months.

19 Q Some-- somebody told you that it needed to be

20 prepared, did they not?

21 A That is correct.

22 Q Who told you?

23 A I believe it was Bruce Linder and my attorney, my

24 counsel.

25 Q Mr. Webber?

1 A No.

2 Q Which, which counsel?

3 A I'm going to take a little bit of time to try to  
4 remember.

5 Q Okay.

6 JUDGE FRYSIK: I didn't hear you. I'm sorry.

7 WITNESS: I'm going to try to take -- I'm going to  
8 take a little bit of time to try to remember. I believe it  
9 was Mr. Neely.

10 BY MR. WARD:

11 Q Okay. Is this something that you prepared in, in a  
12 single sitting, or did you work on it over a period of days or  
13 weeks or --

14 A It wasn't in a single sitting.

15 Q Was it done in pencil or ink? Did you revise and  
16 edit as you went along or --

17 A I believe it was in ink and then I would just  
18 scratch over it.

19 Q Okay.

20 MR. WARD: And next I'd like to have identified  
21 Rivertown Exhibit 11, a -- also a handwritten document, one,  
22 two, three, four, five, six, seven -- seven pages.

23 JUDGE FRYSIK: All right. It may be marked.

24 (Whereupon, the document referred to  
25 as Rivertown Exhibit No. 11 was



1 marked for identification.)

2 BY MR. WARD:

3 Q Did -- is this also your handwriting?

4 A Yes, it is.

5 Q And did you prepare this at the same time as the  
6 Sample -- as, as the draft budget or after or before or --

7 A Within the same time period.

8 Q And why did you prepare that?

9 A Because then again this was equipment that was going  
10 to be needed and other expenses that I needed to put together  
11 to find out how much money was going to be needed to make the  
12 purchase if it happens.

13 Q Um-hum. Okay. And had you discussed that with Mr.  
14 Neely as well? That is to say --

15 A Can I look at it again?

16 Q Sure.

17 A Thank you.

18 Q That is to say your, your equipment list.

19 A I talked about it with Mr. Neely and Mr. Miller. I  
20 can't remember if every item -- but I do remember talking  
21 about it with them.

22 Q Okay.

23 MR. WARD: And Exhibit 12, I'd like to have marked  
24 Rivertown Exhibit 12, the -- a two-page document which I was  
25 advised by Mr. Neely was a final budget.

1 (Whereupon, the document referred to  
2 as Rivertown Exhibit No. 12 was  
3 marked for identification.)

4 BY MR. WARD:

5 Q Do you recognize that?

6 A Yes, I do.

7 Q Did you prepare that?

8 A Yes, I did.

9 Q Did you type -- this is a -- this appears to be a --  
10 perhaps a boilerplate typed document with, with spaces left to  
11 be filled in and those spaces have been filled in for the most  
12 part, some of them in, in blank and some of them actually  
13 filled in in typewriting. Did you, did you prepare the entire  
14 document? Did you type this document?

15 A No, I didn't type this document.

16 Q Did you receive this, this typewritten form from Mr.  
17 Neely or from Mr. Miller?

18 A From that firm, from either one --

19 Q From, from the firm. As part of that package?

20 A I believe so.

21 Q And all you had to do was fill in the, the blanks.  
22 They hadn't already filled in. I mean, in other words, for  
23 example, on the first page, the \$20,030 filing fee under FCC  
24 Expenses is already --

25 MR. NEELY: \$20,000 --

1 WITNESS: \$2,030.

2 MR. NEELY: Things are bad enough.

3 BY MR. WARD:

4 Q They are, they are. I'm trying to solve Mr.  
5 Clinton's budget problem. That, that was already typed in?  
6 You never even -- you never thought about that later?

7 A I -- not that I never thought about it, but it was  
8 already typed in.

9 Q Yeah. And, and the figures for the, for the legal  
10 expenses? They were already typed in by them as well?

11 A Yes, they were.

12 Q But all the handwritten numbers are ones that you,  
13 you inserted. Right?

14 A That is correct.

15 Q What's the -- I'm sorry. I'm missing something  
16 here. At the bottom of the first set of numbers on the first  
17 page, where -- under Cost of Operation, the first three  
18 months.

19 A I --

20 Q It says -- that's a -- it's handwritten, it says --  
21 does it say three months' loan repayment?

22 A You can't really tell right there what it is.

23 MR. WARD: Mr. Neely, would you have a better copy  
24 of that?

25 MR. NEELY: I don't think I have a better copy of it

1 with me. No. In fact I'm sure I don't have a better copy of  
2 it with me.

3 MR. WARD: But what --

4 MR. NEELY: It's back in my office.

5 MR. WARD: Okay. What, what loan, what loan  
6 repayment does this refer to?

7 MR. MILLER: I'm going to object, Your Honor.  
8 There's no financial issue here. I don't see the relevance to  
9 the existing issues.

10 JUDGE FRYSIK: Well, I guess what he's trying to  
11 find out is the awareness of the witness as to the reason for  
12 the inclusion of that in the budget. That isn't to find out  
13 whether money is available.

14 MR. WARD: Yeah. I don't --

15 JUDGE FRYSIK: To find out whether she knows why  
16 she put it down there. Is that what you're trying to get at?

17 MR. WARD: Exactly. I, I'm -- I don't recall, I  
18 don't recall a loan -- seeing any papers on a loan which  
19 required it's repayment in the first three months of  
20 operation, but I just -- maybe it's refer -- maybe it's  
21 referring to a loan I'm not aware of.

22 BY MR. WARD:

23 Q Do you recall? Was this your addition or could this  
24 have been added at the suggestion of somebody else?

25 A This was my addition.

1           Q     Was it your sense as to -- because of something in  
2 the limited partnership agreement and Mr. Linder's commitment  
3 to loan money to, to prosecute the application? If you don't  
4 recall, that's okay too.

5           A     Well, the, the only loan -- perhaps it's, it's  
6 referring to, to the bank --

7                 JUDGE FRYSIK: Don't speculate. I mean, either you  
8 know it or you don't.

9                 WITNESS: No. I don't know where I got it right  
10 now.

11                JUDGE FRYSIK: You don't?

12                WITNESS: No.

13                BY MR. WARD:

1 Linder agreeing to lend Sample \$300,000 and a letter from his  
2 bank agreeing to lend Bruce \$300,000 to finance his investment  
3 in this station. Do you recall that? Do you recall those?

4 A I would like to see that document about -- the bank  
5 letter again. That might --

6 Q Well, could you -- now, I don't -- I'm not sure I  
7 have it.

8 MR. NEELY: I have a copy of the bank letter here.

9 MR. WARD: Would you show it to her?

10 BY MR. WARD:

11 Q I, I'm just referring to those to try to put this in  
12 context. This -- whether this was something that you --  
13 whether this was --

14 A This final --

15 Q -- this information was --

16 A This final budget was put together prior to October  
17 9th of 1991.

18 Q Okay. And once you put it together, how -- what --  
19 did you, did you send Bruce Linder a copy of it or did you  
20 discuss it with him?

21 A I don't remember sending him a copy of it. I do  
22 remember going over it with him. Mentioning the different --

23 Q Do you think --

24 A -- figures.

25 Q -- you might have walked him through various

1 categories? For example, your budgeted salaries of \$16,800  
2 for three months? Do you recall what level of detail you may  
3 have gotten into with him?

4 A No, I don't recall what level of detail.

5 Q Did you discuss with him either that or, or at some  
6 other time your, your equipment list that -- been put together  
7 as Exhibit -- Rivertown Exhibit 11?

8 A Did I ever talk about the. the equipment list with

1 (Whereupon, the document referred to  
2 as Rivertown Exhibit No. 13 was  
3 marked for identification.)

4 MR. WARD: -- a proposal to -- or from Harris Allied  
5 Equipment Company dated -- it's covered with a September 9,  
6 1991, letter to Ms. Sample from Harris Allied. And then there  
7 follows pages 1 through 33, but with page 23 missing as I  
8 recall, of a item-by-item equipment proposal.

9 BY MR. WARD:

10 Q Do you recognize that, Ms. Sample-Day?

11 A Yes. I do recognize the cover letter.

12 Q And you would have received that a day or so after  
13 September 9th of '91. Correct?

14 A That is correct.

15 Q And so -- did, did you have this before -- this --  
16 by this I mean this Exhibit 13 for identification. Did you  
17 have that before you prepared your equipment list, the  
18 Rivertown Exhibit 11?

19 A Yes, I did have it before.

20 Q Um-hum. And I -- would it also be correct that you  
21 had it before you prepared your final budget?

22 A Yes, that's correct.

23 Q Um-hum. Now, I notice some handwriting at various  
24 points in, in this proposal. Circles around various dollar  
25 amounts or being crossed out. Do, do you recognize that, that



1 handwriting? Is that yours?

2 A It's not mine. No.

3 Q Do you recognize it?

4 A The numbers seem to be those written by Mark McVey.

5 Q I'd like you to turn in particular to page -- well,  
6 it's the last page and the copy I got was canted so it's not  
7 -- I'm sorry. It's the next to the last page. It should be  
8 page 32, but it was twisted so the page number didn't come  
9 through. The, the handwritten numbers on that page are, are  
10 those Mr. McVey's handwriting or are they yours?

11 A They are not mine and I cannot say for sure that  
12 they were his.

13 Q Okay. When you received this from, from Harris  
14 Allied in -- somewhere in early September, mid September of  
15 '91, what did you do with it?

16 A I flipped through the pages and some of the, the  
17 things I recognized, some of the pieces of equipment I  
18 recognized, some others I didn't. And I asked Mark McVey to  
19 assist me in identifying some of these and that's what he did.

20 Q Did -- is it not, is it not the case that you asked  
21 him to do more than just identify certain items of equipment  
22 that were being proposed? Were you not asking him to  
23 recommend particular items for, for exclusion or inclusion in  
24 your ultimate proposal?

25 A Yes. I did ask him which items would be -- that he

1 | thought would be best. And evidently he scratched some out or  
2 | he put different prices on them, evidently. I do remember  
3 | discussing with him that certain pieces of equipment that they  
4 | had, that they have on this, on this proposal could be found  
5 | cheaper in some other places, the same -- provide the same  
6 | quality and that this was, you know, sometimes these places  
7 | are ripoffs if you're not careful.

8 |       Q     Do you recall any particular items of equipment  
9 | that, that he suggested you would not need because of a --  
10 | your particular type of -- your plan of operation?

11 |       A     No, I don't.

12 |       Q     Did you and he discuss your need for an STL at all?

13 |       A     We talked about it. Yes.

14 |       Q     Do you know what an STL is?

15 |       A     Yes, I do.

16 |       Q     Have you done some studying on that subject since we  
17 | deposed -- took your deposition in April back in Eldon?

18 |       A     In part what I've remembered, in part I've looked  
19 | into it a little bit more. Yes.

20 |       Q     What, what's your understanding of an STL today?

21 |       A     I can't give a very fancy description of it. Studio  
22 | Transmitter Link. And it's equipment that's needed in case  
23 | the tower is away from the studio. It's the equipment that  
24 | allows the signal to go to the, to the transmitter.

25 |       Q     From, from the studio?

1 A That is correct.

2 Q That's very good. Did -- do you propose to have an  
3 auxiliary power generator?

4 A Yes, I do.

5 Q Where would that be located?

6 A I don't know for sure. At the transmitter, I  
7 suppose.

8 Q Okay. You're not sure of that? Did you ever  
9 discuss that with --

10 A I'm pretty sure.

11 Q Does your station -- what's the purpose of the  
12 auxiliary power generator?

13 A That's in case if the normal electricity, the normal  
14 power, is down. Then you use that to, to remain on the air.

15 Q You're not planning to buy two of these units? One  
16 for the studio and one for the transmitter?

17 A Once again I'd have to look at my notes.

18 Q Please do. That's, I think, your, your exhibits on  
19 that -- credit for buy an auxiliary power generator.

20 A I found it. It's right here, on the list. This  
21 would be --

22 MR. NEELY: What, what was the question, Don?

23 JUDGE FRYSIK: One or two generators.

24 MR. WARD: Oh, yeah, is she planning on buying one  
25 or two.

1 JUDGE FRYSIAK: Where are you -- what exhibits are  
2 you looking at?

3 MR. NEELY: The witness is looking at Rivertown  
4 Exhibit 11 -- 10. The last page of that document.

5 JUDGE FRYSIAK: All right.

6 MR. WARD: Well, I'm --

7 WITNESS: If, if we can all see that copy, I did  
8 want that auxiliary power.

9 JUDGE FRYSIAK: You say you did not want it?

10 WITNESS: No, I did. And to the best that I knew,  
11 if that is what is on that page is just one, that's all I  
12 thought that I needed.

13 MR. WARD: At, at that time. You recognize now  
14 that, that if you really -- if your studio is not collocated  
15 with your transmitter, that in fact you would need two  
16 auxiliary power generators to ensure --

17 WITNESS: That's my understanding now.

18 MR. WARD: Yes. So -- I think Sample Exhibit 4 is  
19 their, their standardized integration section -- very, very --  
20 the very last paragraph on page 4, Sample will claim credit  
21 for installing auxiliary power source so that the new station  
22 may continue to operate in the event of a failure of  
23 commercial power. But that -- I would submit, Your Honor,  
24 that credit is going to be kind of eviscerated here. You  
25 don't know whether the power's going to go off at the

1 transmitter site or the studio from one day to the next, do  
2 you?

3 MR. MILLER: Your Honor, the predicate is argument,  
4 which belongs in findings and --

5 MR. WARD: You, you don't have an extra -- the  
6 witness doesn't have an extra set of these documents --

7 MR. NEELY: Of your -- yes, I do. Your Rivertown  
8 exhibits?

9 MR. WARD: Yes.

10 MR. NEELY: I do.

11 MR. WARD: For her? I -- because I, I hate to  
12 hover --

13 MR. NEELY: Yeah. I'll stand, I'll stand by the  
14 witness and we can look at them together.

15 MR. WARD: Fine. I just want to talk about some of  
16 these.

17 BY MR. WARD:

18 Q Ms. Sample, I noticed in your application, your  
19 application doesn't contain any EEO plan --

20 A That is correct.

21 Q -- as I recall. Why, why is that?

22 A I will have less than five full-time employees.

23 Q I'm sorry?

24 A I will have less than five full-time employees.

25 Q Um-hum. And I believe you testified in your

1 deposition that you planned, in fact, to have just four full-  
2 time employees?

3 A That is correct.

4 Q And four part-time employees?

5 A That is correct.

6 Q And, and what were the positions of these full-time  
7 employees?

8 A Full-time?

9 Q Um-hum.

10 A The general manager, the sales person, traffic  
11 manager, and the program director.

12 Q And the station, as I recall your testimony, your  
13 deposition, is going to operate a full 18-hour a day schedule,  
14 7 days a week.

15 A That's correct.

16 Q And it's not going to be -- you're not going to  
17 program it by satellite?

18 A That is correct.

19 Q Correct? And I had a question then and I have a  
20 question now. Who's going to be on -- who's going to actually  
21 operate the station?

22 MR. MILLER: Your Honor, we do not have a staffing  
23 issue here. This is a question as to whether the staff is  
24 adequate.

25 MR. WARD: Well, it's a question as to why they

1 don't have an EEO plan, really. Your --

2 MR. NEELY: Come on!

3 BY MR. WARD:

4 Q Well, let me, let me, let me, let me withdraw that  
5 question. In your -- in Rivertown Exhibit 10, your draft  
6 budget, you have, right on the very first page under salaries  
7 you have three sales people, one general manager, and four  
8 D.J.s.

9 A Yeah, that was, that was a draft.

10 Q Uh-huh. Okay. How about in your final budget. How  
11 many people does that -- how many people did you plan for  
12 that?

13 A The 16 -- or the salaries?

14 Q Um-hum.

15 A \$16,800.

16 Q Um-hum. That's, that's the salaries for the four  
17 full-time and four part-time people?

18 A That is correct.

19 Q What's, what's your, what's your salary going to be?

20 A I believe it was in the neighborhood \$1,100 or  
21 \$1,070, thereabouts, a month.

22 Q \$1,100 to --

23 A \$1,000 -- about one -- I think it was \$1,070  
24 thereabouts.

25 Q Well, where'd that number come from?

1 A I -- from my head.

2 Q I don't mean just now, but I mean, I mean how was  
3 that salary figure for you developed?

4 JUDGE FRYSIK: Well, would you be more specific?

5 BY MR. WARD:

6 Q On what was that number based? Is that what you're  
7 being paid now? At KCSI?

8 A No. It's not the same.

9 Q You're being paid more than that now?

10 A Yes.

11 MR. NEELY: Objection.

12 JUDGE FRYSIK: -- been answered.

13 MR. WARD: I'm sorry?

14 JUDGE FRYSIK: The question's been answered.

15 BY MR. WARD:

16 Q Did, did you discuss that number with, with Bruce  
17 Linder?

18 A The \$16,800?

19 Q No. The, the \$1,100 or --

20 A No, I didn't discuss it.

21 Q Your salary number?

22 A No, I did not discuss it with him.

23 Q Okay. You did discuss with him the \$16,800?

24 A We talked about it. I can't say it was a  
25 discussion.



1 Q Is it your -- in your understanding you have, you  
2 have the right to set your own salary at any, any level you  
3 want?

4 A Yes. That's my understanding.

5 Q And if the station, the station becomes immensely  
6 profitable, you can be paying yourself a salary to rival  
7 Michael Jordan's and Mr. Linder would have no --

8 MR. MILLER: Objection, Your Honor.

9 JUDGE FRYSIK: Sustained.

10 MR. WARD: They're objecting to Michael Jordan? I  
11 hope you're not objecting to, to Michael Jordan. In any  
12 event, you, you -- your testimony you have, you have  
13 flexibility in setting that --

14 MR. MILLER: Asked and answered. Can we move on,  
15 please?

16 JUDGE FRYSIK: Sustained.

17 MR. WARD: How tall is your tower going to be --

18 MR. MILLER: Objection.

19 JUDGE FRYSIK: She may answer if she knows.

20 WITNESS: Slightly over 300 feet.

21 BY MR. WARD:

22 Q Was that -- did -- was that a determination made by,  
23 by your engineer or, or by you and Mr. McVey or what was the,  
24 what was the driving force in this -- determining the tower  
25 height?